A **MALAYAN BANKING BERHAD**

v.

CHAIRMAN SARAWAK HOUSING DEVELOPERS' ASSOCIATION

B

FEDERAL COURT, PUTRAJAYA
RAUS SHARIF PCA
SURIYADI HALIM OMAR FCJ
AHMAD MAAROP FCJ
C ZALEHA ZAHARI FCJ
ABU SAMAH NORDIN FCJ
[CIVIL APPEAL NO: 02(f)-79-11-2012(Q)]
28 MAY 2014

D ***BANKING:*** *Cheques - Unauthorised signatories - Forged cheques - Association opened account with bank - Executive secretary of Association named as additional signatory of cheques - Fraudulently issued cheques - Recovery proceedings by Association for proceeds of cheques against bank - Recovery proceedings initiated through Chairman of Association -*
E *Whether public officer only person entitled to commence proceedings - Whether suit must be pursued in personal name of office bearer*

UNINCORPORATED ASSOCIATION: *Society - Capacity - Forgery of cheques by executive secretary of Association - Recovery*
F *proceedings by Association for proceeds of cheques against bank - Recovery proceedings initiated through Chairman of Association - Whether public officer only person entitled to commence proceedings - Whether suit must be pursued in personal name of office bearer - Societies Act 1966 - Rules of the High Court 1980 O. 15 r. 12*

G Having opened an account with the appellant, the Sarawak Housing Developers' Association ('the Association') had allegedly notified the appellant *via* a letter ('the letter') that the Association's executive secretary ('Nazerah') was named as the additional signatory of cheques limited to RM2,000 and below.
H Attached to the letter were minutes of the executive committee meeting stating the addition of Nazerah as a signatory, signed by her and purportedly the Chairman. Between 23 May 2002 and 25 April 2003, 186 cheques ('the cheques') totalling to the sum of RM322,007.95 were issued by Nazerah but her fraudulent acts
I were unveiled when irregularities were discovered in the account.

The Association then notified this matter to the appellant and through its Chairman ('the respondent') filed an action in the High Court, against the appellant to recover proceeds of the cheques. The appellant argued that the only person entitled to commence proceedings for and on behalf of the Association was its public officers and if none was registered, the suit must be pursued in the personal name of its office bearers. The High Court decided in favour of the respondent and the said decision was affirmed by the Court of Appeal. Hence, the present appeal. The issue that arose for the court's determination was whether the respondent was right in suing the appellant under his capacity as the Chairman rather than his individual name, as no public officer was declared and registered by the Registrar of Society.

Held (dismissing appeal with costs)
Per Suriyadi Halim Omar FCJ delivering the judgment of the court:

(1) The action here was not commenced in the name of the Association. Hence, it did not breach any rule of the inability of an Association to sue in its name. As no public officer was declared and registered, the respondent had initiated a representative action, as permitted by O. 15 r. 12 of the Rules of the High Court 1980 ('RHC'). A society may sue in the name of its public officer but in the absence of a registered public officer, a representative claim by one or more of its office bearers on behalf of the society would suffice. (para 28)

(2) The respondent and his representative capacity were easily identifiable despite the scrutiny of the intitulement being cursory. No error or uncertainty could be detected on the face of the record, let alone no injustice would occur if any rectification exercise is undertaken. With the Chairman being an office bearer under art. 3(3) of the Association's constitution, empowered to bring the action and redress the wrong suffered by the members, the action was justifiable. All the members represented by the Chairman had a common interest and grievance, invaded by an enemy, with the relief claimed in its nature being beneficial to all. (paras 31 & 32)

(3) The respondent's action could not be said to be, on the face of it, null and void. By alluding to his capacity as the Chairman, it was reasonable to infer that this was a representative action. The Association could not sue under its

name. By adding the word 'Chairman' as a prefix to the Association, did not make this action initiated by the Association *per se*. The respondent, on the other hand, might sue as the Chairman of the Association even though he is not a public officer, without the need to allude to his personal name as suggested by the appellant. (paras 33 & 34)

Bahasa Malaysia *Translation Of Headnotes*

Setelah membuka sebuah akaun dengan perayu, Persatuan Pemaju Perumahan Sarawak ('Persatuan') didakwa telah memaklumkan kepada perayu menerusi sepucuk surat bahawa setiausaha eksekutif Persatuan ('Nazerah') telah dilantik sebagai penandatangan tambahan bagi cek-cek yang terhad kepada RM2,000 dan ke bawah. Dilampirkan bersama-sama dengan surat tersebut adalah minit mesyuarat jawatankuasa eksekutif yang menyatakan penambahan Nazerah sebagai penandatangan, ditandatangani olehnya dan kononnya, Pengerusi. Antara 23 Mei 2002 dan 25 April 2003, 186 cek ('cek-cek tersebut') berjumlah RM322,007.95 dikeluarkan oleh Nazerah tetapi tindakan menipunya terdedah apabila ketidakaturan dikesan dalam akaun. Persatuan kemudiannya memaklumkan hal ini kepada perayu dan melalui Pengerusinya ('responden') memfailkan satu tindakan di Mahkamah Tinggi, terhadap perayu untuk mendapatkan semula hasil cek-cek tersebut. Perayu menghujahkan bahawa satu-satunya individu yang berhak untuk memulakan prosiding untuk dan bagi pihak Persatuan adalah pegawai-pegawai awamnya dan jika tiada yang didaftarkan, guaman tersebut mestilah diteruskan di bawah nama sebenar pemegang jawatannya. Mahkamah Tinggi memutuskan berpihak kepada responden dan keputusan tersebut dikekalkan oleh Mahkamah Rayuan. Oleh itu, rayuan ini. Isu yang timbul bagi pemutusan mahkamah adalah sama ada responden betul dalam menyaman perayu dalam kapasitinya sebagai Pengerusi dan bukannya nama individunya, kerana tiada pegawai awam yang diisytiharkan dan didaftarkan oleh Pendaftar Persatuan.

Diputuskan (menolak rayuan dengan kos)
Oleh Suriyadi Halim Omar HMP menyampaikan penghakiman mahkamah:

(1) Tindakan ini tidak dimulakan di bawah nama persatuan. Oleh itu, ia tidak melanggar sebarang peraturan yang tidak membolehkan satu-satu Persatuan menyaman dalam namanya. Oleh kerana tiada pegawai am yang diisytiharkan dan

didaftarkan, responden telah memulakan tindakan perwakilan, seperti yang dibenarkan oleh A. 15 k. 12 Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT'). Sebuah Persatuan boleh menyaman di bawah nama pegawai awamnya tetapi dengan ketiadaan pegawai awam berdaftar, tuntutan berwakil oleh satu atau lebih pemegang jawatannya bagi pihak persatuan tersebut adalah mencukupi.

(2) Responden dan kapasiti perwakilannya mudah dikenal pasti walaupun penelitian terhadap intitulmen adalah secara pintas. Tiada kekhilafan atau kesamaran yang boleh dikesan pada dasar rekod, apatah lagi tiada ketidakadilan yang akan berlaku jika langkah pembetulan dijalankan. Dengan Pengerusi sebagai pemegang jawatan di bawah art. 3(2) Perlembagaan Persatuan, mempunyai kuasa untuk membawa tindakan ini dan memperbetulkan kesalahan yang dialami oleh ahli-ahlinya, tindakan adalah berjustifikasi. Kesemua ahli yang diwakili oleh Pengerusi mempunyai kepentingan dan kilanan yang sama, diserang oleh satu musuh, dengan relief dituntut bersifat memanfaatkan semua.

(3) Tindakan responden tidak boleh dikatakan, pada dasarnya, tidak sah dan terbatal. Dengan merujuk kapasitinya sebagai Pengerusi, adalah munasabah untuk membuat kesimpulan bahawa ini adalah tindakan perwakilan. Persatuan tidak boleh menyaman di bawah namanya. Dengan menambah perkataan 'Pengerusi' sebagai awalan kepada Persatuan, tidak menjadikan tindakan ini dimulakan oleh Persatuan, dengan sendirinya. Responden, sebaliknya, boleh menyaman sebagai Pengerusi Persatuan walaupun bukan seorang pegawai awam, tanpa perlu merujuk nama sebenar seperti yang dicadangkan oleh perayu.

Case(s) referred to:

Abdul Rahim Aki v. Krubong Industrial Park (Melaka) Sdn Bhd & Ors [1995] 4 CLJ 551 CA ***(refd)***

Cheow Chew Khoon v. Abdul Johari Abdul Rahman [1995] 4 CLJ 127 CA ***(refd)***

Chin Mee Keong & Ors v. Pesuruhjaya Sukan [2007] 5 CLJ 363 CA ***(refd)***

Duke of Bedford v. Ellis [1901] AC 1 ***(refd)***

Harkness v. Bell's Asbestos & Engineering Ltd [1967] 2 QB 729 ***(refd)***

Ministry of Housing and Local Government v. Sharp [1970] 2 QB 223 ***(refd)***

National Assistance Board v. Wilkinson [1952] 2 QB 648 ***(refd)***

Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***

A *S Kulasingam & Anor v. Commissioner Lands, Federal Territory & Ors [1982] CLJ 65; [1982] CLJ (Rep) 314 FC* ***(refd)***
Score Option Sdn Bhd & Anor v. Duar Tuan Kiat & Ors [2012] 1 LNS 812 CA ***(refd)***
Seaford Court Estates Ltd v. Asher [1949] 2 KB 481 ***(refd)***
B *Smith v. Cardiff Corporation [1954] 1 QB 210* ***(refd)***
Sunkyong International Inc v. Malaysian Rubber Dvpt Corp Bhd [1992] 3 CLJ 1531; [1992] 1 CLJ (Rep) 310 SC ***(refd)***
Tai Hing Cotton Mill Ltd v. Liu Chong Hing Bank Ltd and others [1986] 1 AC 80 ***(refd)***
Tengku Abdullah Ibni Sultan Abu Bakar & Ors v. Mohd Latiff Shah Mohd
C *& Ors & Other Appeals [1997] 2 CLJ 607 CA* ***(refd)***
United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd [1993] 2 CLJ 31 SC ***(refd)***

Legislation referred to:
Rules of Court 2012, O. 2 r. 1, O. 15 r. 12
D Rules of the High Court 1980, O. 15 r. 12(1)
Societies Act 1966, s. 9(c)

For the appellant - Chan Kay Heng; M/s Chan & Chan Advocates
For the respondent - Lim Heng Choo; M/s Lim & Lim Advocates

E *[Appeal from Court of Appeal, Kuching; Civil Appeal No: Q-02-841-2009]*

Reported by Najib Tamby

F

JUDGMENT

Suriyadi Halim Omar FCJ:

[1] The defendant, hereinafter referred to as the appellant, had filed a successful leave application before us in respect of the sole
G question of law which reads as follows:

> Whether the Sarawak Housing Developers' Association, which is a society registered under the Societies Act 1966, can sue as "Chairman Sarawak Housing Developers' Association".

H

[2] The plaintiff ie, the respondent had sued the appellant for the refund of RM322,007.95 debited from its account. In the course of the hearing at the High Court, followed by an appeal at the Court of Appeal, much centered on the issue whether the
I respondent was right in suing the appellant under the office-bearer's capacity of 'Chairman, Sarawak Housing Developers' Association' rather than his individual name. As gleaned from

above the Sarawak Housing Developers' Association ("Association") is an Association registered under the Societies Act 1966 ("the Act").

[3] The respondent's case was that the appellant had wrongfully cleared 186 cheques encashed by the Association's executive secretary ie, one Nazerah Haji Obeng ("Nazerah"), causing the Association's account to be debited of the aforesaid sum of RM322,007.95. The respondent wanted a refund of the latter sum. In its defence, amongst others, the appellant pleaded that the respondent lacked capacity to sue.

[4] For better appreciation of this appeal, in relation to the question for our determination we reproduce the facts, with the chronology beginning with a letter dated 6 October 1992, when the Association applied to open a current account with the appellant at its branch at Wisma Satok. In support of the account application the following documents were supplied, *viz*.:

(i) the relevant Malayan Banking application forms;

(ii) copies of the rules and regulations/constitution of the Association;

(iii) a list of the current board members; and

(iv) the Association's resolution to open the current account.

[5] The application was successful and the Association's current account supplied by the appellant bore the number 0-11113-20591-2 ("the account"). The appellant was notified of the persons allowed to operate the account. One of the rules made known to the appellant at the time of opening the account was evident in para. 9.3 of the rules and regulations, and reads:

> All cheques or withdrawal notices on the Association's account shall be signed jointly by the Chairman (or in his absence the Vice-Chairman) and the Treasurer. In the absence of the Treasurer the Assistant Treasurer shall sign in his place.

[6] It is pertinent to note that the appellant was forwarded a copy of the rules and regulations and was also furnished with the names of the office bearers and signatories of all related negotiable instruments, from the time the account was approved, together with the changes in the office bearers.

[7] Following the third executive committee meeting of the Association on 11 April 2002, the abovementioned Nazerah was appointed the executive secretary and tasked with the daily administrative duties of the office. She was also tasked with the recording of the minutes of the executive committee meetings. At the same time, she kept the cheque book of the account.

[8] *Vide* letter dated 18 May 2002, purportedly signed by the Association's Chairman, the appellant was informed that Nazerah, was named as an additional signatory of cheques subject to a limit of RM2,000. The letter also informed the appellant that only one signatory was required for cheques of RM2,000 and below. Attached to the letter was part of the minutes of the executive committee's meeting of 11 April 2002, stating that Nazerah would be one of the authorised signatories on behalf of the Association. The said minute was signed by her and purportedly too by the Chairman.

[9] Between 23 May 2002 to 25 April 2003 a total of 186 cheques were issued by Nazerah, with them being drawn and made payable "cash" or for other third parties, for sums of RM2,000 or less altogether totalling RM322,007.95.

[10] The fraudulent acts of Nazerah went unnoticed until the end of April 2003 when the Association's auditor highlighted the irregularities in the account. This resulted in a police report being lodged against Nazerah. In fact the appellant was also notified. The Association thereafter filed an action against the appellant to recover the proceeds of the honoured cheques signed by Nazerah.

[11] In the course of the trial at the High Court, apart from para. 9.3 of the rules and regulations supplied above, the following clauses also took centre stage, and they are:

i. Clause 9.2: "I/We agree to examine and notify the Bank of any errors, irregularities, discrepancies, claims and unauthorized debits or items whether made, processed or paid as a result of forgery, fraud, lack of authority, negligence or otherwise by any person whatsoever";

ii. Clause 9.3: "I/We further agree that If/we fail to advise you in writing of the non-receipt of the statement from you, or to notify you of any errors, discrepancies, claims or unauthorized debits or items in the statement within twenty-one (21) days from the date of the statement, the Bank's accounts or records shall be conclusive evidence of the

transaction entries and balances in such accounts and I/We shall be deemed conclusively to have accepted all matters contained in the statement as true and correct in all aspects (Conclusive evidence clause)"; and

iii. Clause 6.2: "The conditions printed on the cover of the cheque book are to be strictly observed".

[12] The respondent's cause of action was premised on the grounds, *inter alia* that the appellant had breached its duty of care in failing to check with the office bearers, failed to appreciate the constitution of the Association, and to find out the truth of the contents of the letter dated 18 May 2002. The respondent also argued that forgery was indeed committed by Nazerah. Due to the combined failures to act accordingly, the appellant was alleged to have committed the tort of conversion.

[13] As regards the issue of capacity the respondent maintained firmly that the Chairman of the Association was suing on behalf of the Association and not in his personal capacity. Though both parties agreed that the respondent had not registered any of its office bearers as its public officers, and conceded by both that such oversight was not fatal, the respondent on the other hand submitted that it was entitled to institute the proceedings as per the statement of claim.

[14] The appellant held the simplistic view that the only person entitled to commence proceedings for and on behalf of the Association was its public officers and if none was registered, the suit must be pursued in the personal name of its office bearers. To do otherwise was clearly in contravention of s. 9(c) of the Act *(infra)*. This explains para. 1 of the defence where it was alleged that the respondent lacked capacity to sue, and with such a serious flaw detected, the claim must be struck out. Further, the appellant contended that there was non-compliance of O. 15 r. 12(1) of the Rules of the High Court 1980 ("RHC 1980"), in that the statement of claim did not reflect that it was a representative action.

[15] As regard to the burden, of proof the appellant canvassed that it was up to the respondent to establish the fact that Nazerah was not authorised to sign cheques. As far as it was concerned no forgery was proven in respect of the minutes of the committee meeting of 11 April 2002. And lastly cls. 9.2 and 9.3 were in its favour.

[16] Had the appellant been successful in its argument pertaining to the *locus standi* issue, the substantive evidential matter of whether the respondent had exercised due care when drawing the cheques which would have avoided the facilitating of fraud or forgery, and whether the respondent had been prompt in informing the appellant of any unauthorised cheques, the action would have ended there (*Tai Hing Cotton Mill Ltd v. Liu Chong Hing Bank Ltd and others* [1986] 1 AC 80; *United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd* [1993] 2 CLJ 31. As the antecedents showed, the High Court upon full hearing instead decided in favour of the respondent and, *inter alia*, adjudged that the action was commenced in accordance with law. Being dissatisfied with the High Court's decision the appellant filed an appeal to the Court of Appeal. The Court of Appeal affirmed the High Court's decision on the issue of *locus* and held that the Chairman of the Association was entitled to sue the appellant by way of a representative action for and on behalf of all its members.

[17] At the outset we stated that leave from this court was granted on 2 October 2012 in respect of only one issue (see the above question as supplied). That being so, the paramount question before us fell squarely on the issue of whether the respondent was right in alluding to the capacity of the Chairman of the Association or should he have alluded to his personal name, as no public officer was declared and registered by the Registrar of Society.

[18] Since the Malaysian rules regarding *locus standi* is strict, what interpretation then should be given by us, in the context of the intitulement of this appeal? Despite the multiplicity of rules of interpretation of statutes, some of which supplies the judge with wide discretion, such privilege is not an excuse to detract from interpreting the true intention of Parliament. The judge invariably assumes a significant role when faced with conflicting interpretations and cannot fold his arm and thenceforth blame the draftsman for the creases in the provisions (*Seaford Court Estates Ltd v. Asher* [1949] 2 KB 481; *Ministry of Housing and Local Government v. Sharp* [1970] 2 QB 223; *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265).

[19] Since the question imports s. 9(c) of the Act this provision therefore must be dealt with forthwith. It reads: A

> A society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose, and, if no such person is registered, it shall be competent for any per son having a claim or demand against the society to sue the society in the name of any officer-bearer of the society. B

[20] The respondent is a functioning registered society registered on 6 July 1993 carrying the registration number 33/93 (Sarawak), and having property, office bearers and the like and is subjected to the provisions applicable to registered societies under s. 9 of the Act. The moveable property of the respondent is deemed to be vested in the governing body of the society whilst the immoveable property may be registered in the name of the society. C D

[21] A brief scrutiny of the above provision of s. 9(c) of the Act may conveniently be split into two limbs in that a society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society. As it is common ground that no public officer was declared and registered by the Registrar of Society this first limb is inapplicable for the current appeal. E

[22] The second limb speaks of a given situation where if no such person is registered (as in the current case), it shall be competent for any person having a claim or demand against the society to sue the society in the name of any office-bearer of the society. This limb enables any person having a claim to sue the society but failed to provide the latter's right to sue another person when there has been a failure to declare and register a member as a public officer by the Registrar. Therefore, regardless of the uneven playing field, or *lacuna* this provision or the Act for that matter, does not take away the fundamental right of the society from being recompensed. F G H

[23] If the Act wishes to take away that right, words must be used that point unmistakably to that conclusion (*National Assistance Board v. Wilkinson* [1952] 2 QB 648). Devlin J in clear terms said:

> It is a well-established principle construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion ... I

A It is another principle of statutory interpretation that the court leans against an interpretation which produces unjust and arbitrary consequences.

[24] Due to the aforesaid *lacuna* under s. 9(c) of the Act, O. 15 r. 12 of the RHC 1980 (in *pari materia* with the Rules of Court 2012) becomes highly relevant. This provision reads:

B

> Representative proceedings (O. 15 r. 12) (12). (1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the
C proceedings may be begun and, unless the Court otherwise orders, continued by or against anyone or more of them as representing all or as representing all except one or more of them.

[25] The silence on the requirement of the personal name of a party is resounding and obviously this rule is more flexible than
D s. 9(c) of the Act thus enabling the respondent to pursue the matter pursuant to the above order. The factual findings of the learned judge is enlightening and useful as regards the evidence of this action. From the very testimony of the Chairman of the Association the learned judge accepted his evidence that the suit
E was representative in nature. The learned judge concluded that the appellant knew from the outset that the Association was seeking recovery of the abovementioned sum of RM322,007.95 and by no account could have been misled as to the identity of the respondent or type of action filed. The learned trial judge
F further opined that the defence of the appellant was merely an advocacy ploy which could not be condoned by him.

[26] The Court of Appeal likewise had opined that the Chairman of the respondent acted in accordance with law by commencing
G and pursuing this matter against the appellant in the way it did. In its grounds of judgment the Court of Appeal, *inter alia* adjudged as follows:

> ... We are in agreement with the learned trial Judge that it is evident from the respondent's pleaded case and the evidence of
H its Chairman that this claim is being pursued by the Chairman on behalf of its members. To the extent that it is not fatal for an Association to sue in the name of an office bearer in the absence of a registered public officer, and this action is clearly maintainable in law.

I

[27] In fact the acceptability of the respondent's action falls within the *dictum* of James Foong JCA in *Chin Mee Keong & Ors v. Pesuruhjaya Sukan* [2007] 5 CLJ 363, which reads as follows:

> ... the approach should be these: Firstly, for certain, an Association cannot sue in its own name. Preferably an action should be commenced by its registered public officer. If none is registered as such, then it is permissible for any office bearer of the Association to mount a claim for and on behalf of its members. This would put him on the same footing as a representative for others having the same interest in the proceeding which is permitted under Order 15 r. 12 of the RHC.

[28] The action here was not commenced in the name of the Association hence not breaching any rule of the inability of an Association to sue in its name. As no public officer was declared and registered, the respondent had initiated a representative action as permitted by O. 15 r. 12 the RHC 1980 (O. 15 r. 12 Rules of the Court 2012). On this point see also the case of *S Kulasingam & Anor v. Commisioner of Lands, Federal Territory & Ors* [1982] CLJ 65; [1982] CLJ (Rep) 314, where Eusoffe Abdoolcader, J (as he then was), speaking for the court had opined that a society may sue in the name of its public officer but in the absence of a registered public officer, a representative claimed by one or more of its office bearers on behalf of the society would suffice. Alluding to the above speech we find that the format of the respondent's action falls safely within it.

[29] Generally speaking, the issue before us, which is a point of practice and procedure and no stranger to courts, and have been consistently affirmed by courts that an intitulement that is wrong at the outset or there is uncertainty as to the type of suit, entitles the court to strike it out (see *Abdul Rahim Aki v. Krubong Industrial Park (Melaka) Sdn Bhd & Ors* [1995] 4 CLJ 551; [1995] 3 MLJ 417; *Score Option Sdn Bhd & Anor v. Duar Tuan Kiat & Ors* [2012] 1 LNS 812; [2013] 5 MLJ 716; *Cheow Chew Khoon v. Abdul Johari Abdul Rahman* [1995] 4 CLJ 127; [1995] 1 MLJ 457). However the strict interpretation of the procedural landscape saw a shift with the promulgation of the previous O. 2 r. 1 of the RHC 1980 and was reaffirmed in the Rules of Court 2012, whereupon any omission or mistake is to be regarded as an irregularity, rectifiable so long as it can be undertaken without

causing injustice. The distinction between mere irregularities and nullities now ceased to exist. The relevant provision of O. 2 r. 1 of the Rules of Court 2012 reads as follows:

> 1. (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any steps taken in the proceedings, or any document, judgment or order therein.

[30] Under O. 1A of the Rules of Court 2012 the court or judge now shall have regard to the justice of the particular case and not only to the technical non-compliance of the any of the rules.

[31] In the current appeal, the respondent and his representative capacity, were easily identifiable despite the scrutiny of the intitulement being cursory. In a nutshell no error or uncertainty could be detected on the face of the record let alone no injustice would occur if any rectification exercise is undertaken. (See *Harkness v. Bell's Asbestos & Engineering Ltd* [1967] 2 QB 729; *Sunkyong International Inc v. Malaysian Rubber Dvpt Corp Bhd* [1992] 3 CLJ 1531; [1992] 1 CLJ (Rep) 310; [1992] 2 MLJ 146). With a litany of cases available in current publications pertaining to O. 2 r. 1 no more legal activism is required on this matter.

[32] The O. 15 r. 12 as to representative proceedings, designed to avoid multiplicity of proceedings, should be a flexible tool of convenience in the administration of justice and not to be applied in a rigorous sense. In the circumstances of the case, with the Chairman being an office-bearer under art. 3(3) of the Association's constitution, empowered to bring the action and redress the wrong suffered by the members, the action is justifiable. Here all the members represented by the Chairman have a common interest and grievance, invaded by an enemy, with the relief claimed in its nature being beneficial to all (see *Smith v. Cardiff Corporation* [1954] 1 QB 210; *Duke of Bedford v. Ellis* [1901] AC 1). As opined by the Court of Appeal in *Tengku Abdullah Ibni Sultan Abu Bakar & Ors v. Mohd Latiff Shah Mohd & Ors & Other Appeals* [1997] 2 CLJ 607, inevitably down the line it would be the members who will become the ultimate victim in any loss suffered by a club (or society, as in this case). Unless redressed

promptly the losses suffered here will be beyond recovery and ultimately borne by members of the Association and the respondent personally.

[33] In light of all the above factors the respondent's action cannot be said to be on the face of it null and void. Evidentially by alluding to his capacity as the Chairman it was reasonable to infer that this was a representative action. Taking the argument a step further had he used his personal name, it could be inferred that the action was a personal one.

[34] Having perused the question posed we do not intend to supply a simple yes or no answer but instead state that the Sarawak Housing Developers' Association cannot sue under the Association's name. This is founded on trite law. By adding the word 'Chairman' as a prefix to the Association does not make this an action initiated by the Association *per se*. The respondent on the other hand may sue as Chairman, Sarawak Housing Developers' Association on a representative capacity even though not a public officer, without the need to allude to his personal name as suggested by the appellant. This is a cut and dry case carried out by an office-bearer who holds an office recognised by the Association's constitution on behalf of the members. We thus uphold the findings of the High Court and the Court of Appeal and therefore dismiss the appeal with costs.